



Billing Code: 8025-01

## SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245-AG69

Small Business Timber Set Aside Program

AGENCY: U.S. Small Business Administration

ACTION: Advance notice of proposed rulemaking

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) is seeking comments on possible amendments to its Small Business Timber Set-Aside Program (the Program) regulations. The Small Business Timber Set-Aside Program is rooted in the Small Business Act, which tasked SBA with ensuring that small businesses receive a fair proportion of the total sales of government property. Several timber industry stakeholders have petitioned SBA to make changes to the Program because they believe that the current regulations do not provide adequate protections to ensure that small businesses maintain a fair share of the National Forest timber sale market. In response, SBA, in consultation with the United States Forest Service, is seeking comment on several issues to assist the agency in formulating potential regulatory proposals. SBA will share the comments received in response to this advance notice of proposed rulemaking with the United States Forest Service for their use in determining whether, and if so how, to make any corresponding changes to the United States Forest Service Handbook. First, SBA seeks comments on the possibility of including saw timber

volume sold as part of a stewardship timber or stewardship services contract in the calculation of the timber sale share of small business. Second, SBA seeks comments on how timber sale appraisals should be performed for small business set aside sales and associated costs and benefits to stakeholders. The SBA is also seeking input on various policy options.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by RIN: 3245-AG69, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- For mail, paper, disk, or CD-ROM submissions: Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416.
- Hand Delivery/Courier: Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416.

SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), please submit the information to : Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416, or send an email to [brenda.fernandez@sba.gov](mailto:brenda.fernandez@sba.gov). Highlight the information that you consider to be CBI and

explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Brenda J. Fernandez, Procurement Analyst, Office of Policy, Planning and Liaison, 409 Third Street SW, Washington, DC 20416; (202) 205-7337; [brenda.fernandez@sba.gov](mailto:brenda.fernandez@sba.gov).

SUPPLEMENTARY INFORMATION:

The Forest Service, an agency of the federal government sells saw logs in accordance with the Small Business Act (Pub. L. 85-536 as amended) and the National Forest Management Act (Pub. L. 94-588 as amended). Timber is regularly sold from the federal forests managed by the U.S. Department of Agriculture's Forest Service (USDA/FS) and the U.S. Department of the Interior's Bureau of Land Management (DOI/BLM). On occasion, timber is sold from federal forests which are under the supervision of the U.S. Department of the Interior's U.S. Fish and Wildlife Service, the U.S. Department of Defense, the U.S. Department of Energy, and the Tennessee Valley Authority. Collectively, these agencies are considered the "sales agencies." SBA and the sales agencies jointly set aside timber sales for bidding by small concerns when market data demonstrates that small businesses would not obtain their fair share under open sales. In 1971, USDA and SBA signed a Memorandum of Understanding (MOU) intended to accomplish the declared policy of Congress that a fair proportion of the total sales of Government property be made to small business enterprises defined by SBA (Small Business Act. 15 U.S.C. 631, et seq.). In the 1980s and 1990s, efforts to protect species habitat and watersheds in compliance with federal law and regulation resulted in

dramatic changes to the United States timber industry. These changes included reduced timber harvests on Federal and private lands which in turn caused market failures for timber mills that could not adapt and retool. As a result, many small timber mills (western mills in particular) have been forced to close. As such, the Small Business Timber Set-Aside Program has become increasingly important to ensure that a “fair proportion” of Federal timber is available for purchase by qualified small business concerns.

SBA is soliciting public comment on the Small Business Timber Set-Aside Program to help the agency determine what, if any, changes should be proposed. Specifically, SBA is soliciting public comments on methods to include stewardship sales in the calculation of the timber sale share for small business and considerations for how timber sale appraisals are performed for small business set-aside sales. These possible amendments would not impact the DOI/BLM’s Timber Sale and Forest Management Programs. DOI/BLM’s small business set-asides, which are limited to 8 markets in Oregon, are made in accordance with the terms of a separate MOU between SBA and DOI/BLM. Rather than setting forth computation methods for small business market share considerations, SBA’s MOU with DOI/BLM affords SBA the opportunity to review DOI/BLM annual timber sale plans prior to publication and to request set-asides under the authority of the Small Business Act. When DOI/BLM agrees to set aside certain timber sales, DOI/BLM consults with SBA concerning financial and other performance qualifications to be included in the conditions of sale. While DOI/BLM utilizes various stewardship contracting vehicles, the regulatory amendments contemplated by SBA will not impact DOI/BLM’s use of stewardship contracting.

Further, DOI's current policy regarding small business set-aside timber sales is to appraise the hauling costs to the closest mill that qualifies as a small business under SBA's definition located in.

Saw logs are sold through conventional timber sales and through stewardship contracting. The stewardship contracting program was established by Section 347 of the FY1999 Omnibus Appropriations Act (Pub. L. 105-277) to help achieve land management goals on the national forests, and to help meet the needs of local and rural communities. Stewardship contracting is a goods-for-services arrangement that requires timber companies who cut trees on National Forest System lands to perform other service work in exchange for the timber volume. Integrated Resource Timber Contract (IRTC) formats were developed by the Forest Service for exclusive use in implementing stewardship contracting projects when the value of goods exceeds the cost of services. Integrated Resource Service Contract (IRSC) formats were developed by the Forest Service for exclusive use in implementing stewardship contracting projects when the cost of services exceeds the value of the goods. As demonstrated below, stewardship sales accounted for 31% of all timber (sawtimber plus non-sawtimber) sold by the FS in Fiscal Year 2013. This is the highest percentage of total sales in the last ten years. However, some stakeholders believe that certain FS Regions could/should do consistently better in making timber sales awards to small business.

Stewardship Timber/Service Sales Sold

2004-2013 (FY)

<b>All Sales, Sawtimber + Non-sawtimber (MMbf)</b>										
Year (FY)	R-1	R-2	R-3	R-4	R-5	R-6	R-8	R-9	R-10	All FS
2004	159	163	49	107	208	434	359	319	85	1,883
2005	243	132	72	49	386	392	414	364	54	2,105

2006	189	165	69	68	228	470	858	381	83	2,511
2007	135	198	57	69	272	489	501	352	29	2,101
2008	186	201	43	70	109	525	539	349	4	2,026
2009	216	199	21	41	236	498	476	319	6	2,011
2010	180	196	46	60	252	424	540	358	45	2,100
2011	149	159	54	46	212	464	556	379	37	2,056
2012	144	196	32	53	219	512	521	419	41	2,137
2013	115	210	129	71	229	527	475	393	13	2,162

<b>Stewardship Timber/Service Sales (MMbf)</b>										
Year (FY)	R-1	R-2	R-3	R-4	R-5	R-6	R-8	R-9	R-10	All FS
2004	7	9	25	12	23	19	0	0	0	96
2005	12	9	17	7	23	30	4	2	1	105
2006	48	16	18	15	24	64	42	4	0	231
2007	44	16	28	9	62	91	34	23	1	308
2008	64	35	21	12	14	100	28	10	1	284
2009	45	38	15	11	54	96	62	22	0	343
2010	56	70	26	38	75	120	50	50	0	486
2011	43	33	31	21	47	105	62	50	33	427
2012	41	35	19	22	102	175	92	67	40	592
2013	36	39	107	51	75	202	90	61	0	661

<b>% Stewardship</b>										
Year (FY)	R-1	R-2	R-3	R-4	R-5	R-6	R-8	R-9	R-10	All FS
2004	4%	5%	51%	12%	11%	4%	0%	0%	0%	5%
2005	5%	7%	23%	13%	6%	8%	1%	1%	1%	5%
2006	25%	10%	26%	22%	11%	14%	5%	1%	0%	9%
2007	33%	8%	49%	14%	23%	19%	7%	6%	2%	15%
2008	35%	17%	49%	17%	13%	19%	5%	3%	27%	14%
2009	21%	19%	72%	27%	23%	19%	13%	7%	0%	17%
2010	31%	36%	56%	64%	30%	28%	9%	14%	0%	23%
2011	29%	21%	59%	47%	22%	23%	11%	13%	9%	21%
2012	28%	18%	58%	42%	47%	34%	18%	16%	96%	28%
2013	32%	19%	83%	72%	33%	38%	19%	16%	0%	31%

Data Source: Timber Data Company; November 19, 2013

To help ensure a fair proportion of timber sales go to small businesses, timber sales must be set aside when small business participation falls below a certain amount. In determining this trigger amount, the FS calculates the amount of small business market share based on small business purchases of saw timber volume over a five-year period.

This percentage, based upon historical purchases, sets the framework for what constitutes small businesses' fair proportion of the total sales volume. Currently, the computation of small business market share does not include saw logs from stewardship contracts. SBA is seeking comment on whether the calculation should also include saw timber purchased through stewardship contracts. Specifically, SBA invites comments and supporting data in response to the following questions.

Stewardship Contracting Questions:

1. How should the FS include the saw timber volume on stewardship contracts awarded to small business in the computation of small business market share?
2. How might including stewardship saw timber volume impact future market share calculations for small business concerns that participate in stewardship contracts and/or conventional timber sales?
3. What are the potential impacts (costs and benefits) if SBA regulations at 13 CFR 121.506 were to include the saw timber volume from IRTCs and IRSCs in the calculation of small business market share?
  - a. What is the anticipated impact of the inclusion of saw timber volume from stewardship contracts on stumpage prices?
  - b. If inclusion of saw timber volume from stewardship contracts leads to lower stumpage prices, what is the impact to land management activities (paid for by stumpage prices) and retained receipts?
  - c. What is the anticipated impact on sale values both from an agency perspective and a treasury perspective?
4. What would be the most efficient and effective way to account for actual saw timber

volume from stewardship contracts awarded to small business?

5. Would an increase in the utilization of stewardship contracts in a market area result in a lower representation of small businesses successfully bidding for timber sales in that market area? Should this lead to lowering the market share for small business set-aside sales in that market area when the FS and SBA compute small business participation?
6. Would including stewardship saw timber volume on contracts awarded to small business in the calculation result in more accurate representation of small business participation in the market area?

Unrelated to stewardship contracting, SBA is also seeking public comments on potential amendments to its current regulations at 13 CFR 121.507(a)(4)(i), which provides that on a set-aside timber sale, the small business may not resell more than 30% of the saw timber volume to a large business concern. When the FS offers any timber sale, it appraises the sale for its potential market value and sets the minimum bid that it will accept based on that appraisal. One factor in the appraisal is the haul cost that the purchaser (small or large) will absorb to bring the timber to a manufacturing facility. Currently, all appraisals are made to the nearest mill. In timber sales set aside for small businesses, large mills are ineligible to bid. In the context of a set-aside, if the nearest mill is a large mill, the appraisal will not accurately capture the haul cost to eligible bidders. As such, SBA is seeking public comment on whether the appraisal for a small business set-aside sale should be made to the nearest, small mill.

Set-aside Sale Appraisal Point Questions:

1. How can the actual haul costs to eligible small business timber set-aside purchasers



- be better reflected in the appraisal process?
2. Should there be considerations for keeping the appraisal point to the nearest mill on a small business timber set-aside sale in those market areas that do not have mills that would qualify as “small” under the SBA criteria?
  3. How should the prohibition against small businesses reselling more than 30% of the saw timber volume to a large business concern be taken into account when making appraisals for small business timber set-aside sales?
  4. What is the financial impact to the Forest Service if the 30% rule is included in the appraisal point haul cost calculation of a small business timber set-aside sale?
  5. What is the anticipated impact on trust funds (e.g., Knutson-Vandenberg), if any, if appraisals are made to a small mill rather than the closest processor.
  6. SBA is also requesting data on mill size and location.

The SBA welcomes comments and any available data to help substantiate recommendations made in response to the foregoing general questions, or other potential policy options -- including status quo-- that should be considered for the Small Business Timber Sales Set-Aside Program.

Dated: March 16, 2015

Maria Contreras-Sweet,  
Administrator.